



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

EXECUTIVE PARTICIPATION IN LEGISLATION AS A MEANS OF INCREASING LEGISLATIVE EFFICIENCY

BY JAMES W. GARNER

University of Illinois

I think we hazard nothing in saying that the problem of efficient legislation under modern conditions is one of the most difficult tasks of government. This is due partly to the unwieldiness of overgrown legislative assemblies and the lack of responsible leadership; partly to the enormous demand for legislation, to meet which overtaxes the legislative machine; and partly to the complexity and intricacy of modern legislation, which enhances the difficulty of framing statutes and requires an amount of technical knowledge which the average legislator does not possess. A legislative assembly composed of five or six hundred members without an effective organization and without recognized and responsible leaders is not very unlike a mob. Such a body, like other mobs, must be guided and led if it accomplishes its work.

Mr. Bryce has indicted the possible solutions of the problem of legislation by assemblies of this character.¹ One is to restrict the action of the assembly to a comparatively few simple matters, reserving the others to a smaller body or to the executive. This was the method of the Romans, whose *comitia* had merely the power of adopting or rejecting measures proposed by the magistrates.² In a modified form, it was also the method of the French during the second Empire, when the laws were drafted by the council of state and laid before the legislature by the Emperor, who alone had the right of initiation.³ The second solution is for the legislature to delegate the power of legislation to a single committee composed of members who are at the same time the chief officers of the executive department, the chamber merely retaining the right of veto. This is the system actually followed in England and to a less degree in other countries where the true parliamentary system is in force.

A third solution is for the assembly to divide itself into a number of committees among which all legislative projects are distributed and which

¹ *The American Commonwealth*, vol. i, pp. 156-157.

² Compare Pelham, *Outlines of Roman History*, pp. 159-161.

³ Constitution of 1852, title iii, sec. 8; title vi, sec. 50.

sift out such as in their judgment are worthy of being enacted into law. These measures and these only are usually adopted by the assembly. This is the American method. Of these three methods, the first may be ruled out of consideration, leaving the choice to be made from the last two.

The parliamentary system in one form or another is the solution which has been adopted in the vast majority of countries, whether they be monarchies or republics, whether they have written or unwritten constitutions. In some of them, the ministers are at the same time members of the legislature; in others they are not, yet practically everywhere they have seats in the legislature with the right to initiate legislation and to be heard whenever they demand it.⁴

Wherever large and unwieldy assemblies have attempted to legislate as a whole without the initiation and guidance of leaders, they have not succeeded. Mr. Sidney Low in his *The Governance of England*⁵ has pointed out how the power of legislation in the house of commons has gradually shifted from the house as a whole to the ministry, and Sir Courtenay Ilbert, President A. L. Lowell and Mr. James Bryce have dwelt upon the increasing tendency of parliament to delegate the power of subsidiary legislation to the executive officers. "The house," says Mr. Low, "is scarcely a legislating chamber, it is a machine for discussing the legislative projects of ministers." Lord Salisbury, who spoke with the knowledge which comes from long experience, said in a speech at Edinburgh in 1894; "We have reached the point where discussion is possible in the cabinet, but for any effective or useful purpose, it is rapidly becoming an impossibility in the house of commons." The house is now little more than a "ventilating chamber." Its most important function, as Mr. Low remarks, and as Mr. Bagehot many years ago pointed out,⁶ is selective, that is its chief rôle is the choosing of leaders whom the house obeys and follows. It proceeds on the theory that its principal task is to get good laws made, not to make them itself. In theory the right of

⁴ This is true in Austria, Belgium, Brazil, Chili, Costa Rica, Colombia, Denmark, France, the German Empire, Great Britain, Greece, Guatemala, Honduras, Hayti, Italy, Mexico, The Netherlands, Nicaragua, Norway, Portugal, Prussia, Spain, Sweden, Switzerland, and Salvador. The Constitution of the Southern Confederacy seems to have contemplated the introduction of parliamentary methods since it authorized congress to grant the right to cabinet ministers to occupy seats in either house with the privilege of discussing any measure pertaining to their departments.

⁵ Page 75.

⁶ *The English Constitution*, 2d edition, pp. 200-201.

every member to introduce bills and to have them passed by the house remains, but in fact, four-fifths of all the bills that are passed—nineteen-twentieths of those that are of any great importance, are passed upon the initiation and at the instance of the cabinet, that is, the executive.⁷ The attempt of the French chamber itself to legislate as well as to govern, and its disinclination to follow its chosen leaders are doing more than anything else to undermine the parliamentary system in that country. The French political writers are unanimous on this point. What has happened in the house of commons is likely to happen in every overgrown legislative assembly where the demands for legislation are enormous, because experience is more and more demonstrating the truth of Hamilton's saying that "in all legislative assemblies, the greater the number composing them, the fewer the men who will, in fact, direct their proceedings."⁸ We are beginning to appreciate the force of John Stuart Mill's saying that a distinction should be made between legislating and getting good legislation enacted and that "the only task to which a representative assembly can possibly be competent is not that of doing the work itself but of causing it to be done; of determining to whom or to what sort of people it shall be confided and of giving or withdrawing its national sanction of it when performed."⁹

The thing which distinguishes the legislative organization and procedure of the United States from that of practically every other country is the almost complete disjunction of the legislative department from the executive department. The Constitution debars cabinet ministers from membership in both houses and parliamentary practice denies them the *entrée* thereto either for the purpose of introducing bills, for defending the executive against attack, for furnishing information, or

⁷ Testimony of James Bryce before the committee of the house of representatives on various bills proposing the establishment of a congressional legislative reference bureau. Hearings, February 26, 1912, p. 8; cf., also, Sir Courtenay Ilbert, *Legislative Methods and Forms*, p. 215, for a table of statistics showing the number of government bills and private members' bills passed. For example, in 1900, forty-nine government bills were passed and only fifteen private members' bills.

⁸ *The Federalist*, No. 58, Ford's ed., p. 389.

⁹ *Representative Government*, (Universal Library edition), pp. 85, 95. See p. 96 for his proposal that legislation should be delegated to a small permanent legislative commission. Compare also his autobiography pp. 264-265 where he says, "there is a distinction between the functions of making laws, for which a numerous popular assembly is radically unfit, and that of getting good laws made, which is its proper duty and which cannot be satisfactorily performed by any other authority."

for participating in debate. The power to recommend measures for the consideration of the legislature ordinarily means little to an executive who cannot in person or through his ministers appear in the chamber for the purpose of explaining and advocating the adoption of his recommendations, and to one who belongs to a party which is in the minority in the legislature it means still less. The result is, executive messages have more and more degenerated into perfunctory summaries of departmental conditions or lengthy rhetorical discourses through which the executive addresses the great American public upon various political, economic and social questions, some of which lie quite without the jurisdiction of the national legislature.

While the veto power may be used to prevent bad legislation, it cannot be employed for the purpose of compelling legislative action, to carry out the pledges of the party by whom the president has been chosen. It is not a means of leadership or control.

In the beginning, a procedure akin to parliamentary methods was actually followed by congress. The law organizing the treasury department made it the duty of the secretary of the treasury to "make report and give information to either branch of the legislature in person or in writing respecting all matters referred to him by either house or which shall appertain to his office." In the debates on the bill, it was objected that it would result in the introduction of the parliamentary system and the assertion was not denied. In practice, the cabinet members frequently appeared in the house for the purpose of giving information and advice and for consultation.¹⁰ Hamilton, especially, assumed the rôle of a crown minister, and his example was followed by other cabinet members.¹¹ At the time, all branches of the national government were housed in the same building, so that easy communication between the executive and legislative departments was greatly facilitated; in fact, they were in almost as close touch, says Professor Ford, as if the cabinet officers had been members of congress.¹² For some years these close relations were maintained, and the cabinet ministers exerted an important influence in the shaping of legislation.¹³ When finally the connection was definitely severed and the cabinet members excluded from congress, there were some who regarded the change with deep regret.

¹⁰ See the annals of the first congress, pp. 66, 51, 684, 689.

¹¹ Ford, *Rise and Growth of American Politics*, p. 81.

¹² *Ibid.*, p. 226.

¹³ Compare McConachie, *Congressional Committees*, pp. 221 et seq., also Follett, *The Speaker*, pp. 319, 327, et seq.

Fisher Ames, for example, speaking of the abandonment of the early practice said:

The heads of departments are chief clerks. Instead of being the ministry, the organs of the executive powers, and imparting a kind of momentum to the operation of the laws, they are precluded even from communication with the House by reports. In other countries they may speak as well as act. We allow them to do neither. We forbid them even the use of a speaking-trumpet; or more properly, as the Constitution has ordained that they shall be dumb, we forbid them to explain themselves by signs. Two evils, obvious to you, result from all this. The efficiency of government is reduced to a minimum—the proneness of a popular body to usurpation is already advancing to its maximum; committees already are the ministers; and while the house indulges a jealousy of encroachment in its functions, which are properly deliberative, it does not perceive that these are impaired and nullified by the monopoly as well as the perversion of information by these committees.

It is not at all improbable that the full parliamentary system would have been introduced in the beginning had it not been for the widespread fear of executive domination and tyranny due to the arbitrary conduct of the crown and of the colonial executives in America which had produced very strained relations between them and the legislative assemblies. The result was that the English cabinet system was in more or less disrepute in America. In its existing form, it possesses many features, as Mr. Wilson remarks, that did not invite republican imitation.¹⁴ To most Americans, the English constitution was that of George III and Lord North rather than that of the Whigs, and the ministry was looked upon as a coterie of royal favorites who were controlled by the crown rather than by the house of commons. Under these circumstances, it was difficult to believe that the legislative and executive branches could be brought into close relations without the legislature being dominated by the executive. To avoid the danger of executive domination, it was thought necessary to establish a system of checks and balances such as the parliamentary system did not afford, and to the Americans of the latter eighteenth century, this required the complete separation of the executive and legislative departments. Moreover, the English parliamentary system was immature and operated in practice with far less smoothness and success than it does today. Mr. Bryce ventures the opinion that it was not adopted by the Americans because they did not know of its existence; and that they did not know of its existence be-

¹⁴ *Congressional Government*, pp. 308-309.

cause it was still immature, because Englishmen themselves did not understand it and because the recognized authorities did not mention it.¹⁵

The authors of the constitution were seduced by the theory of a Frenchman¹⁶ into believing that it was not only possible to separate the legislative and executive departments, but that their disjunction was one of the essential conditions of liberty—a theory that was clearly disproven by the experience of the English constitution from which he drew his illustrations.¹⁷ The founders underrated the inconveniences which are inseparable from the disconnection of the two departments and exaggerated the dangers from establishment of close relations between them. They carried the principle of separation so far that they sacrificed not only the efficiency which comes from mutual collaboration and responsible leadership, but each department was made weaker within its own sphere.¹⁸ Nevertheless, as I have stated, quasi parliamentary methods were, in the beginning, followed in practice. The first rules of the house contained no provision for committees, although later in the session provision was made for a committee on elections. As the membership of the house increased and the demands for legislation became more numerous and pressing, the number of committees was gradually multiplied until today there are nearly as many committees in the house as there were representatives in the first congress, and each is to all intents and purposes a miniature legislature in itself. From being a real legislative body, the house has more and more become a huge panel from which the actual legislative organs are selected. Each committee goes its own way without regard to the others; their jurisdictions often overlap; and none are responsible for the legislation which they recommend. The disadvantages of such a system are evident: lack of cohesion and harmony, loss of responsibility, waste of energy and patchwork legislation. Committee hearings are public, but their deliberations are secret and the debates are unreported. The light of the nation cannot be focused upon the doings of sixty or seventy such bodies; the public, therefore, must be content with the information which it gets from the debates in the house, and these are, to a large extent, irrelevant oratori-

¹⁵ *The American Commonwealth*, ed. of 1910, vol. i, 286.

¹⁶ Madison stated in the Convention that Montesquieu was the "oracle always consulted," (*Federalist*, Ford's ed., p. 320).

¹⁷ Madison himself pointed out that "on the slightest view of the British constitution" the departments were not separate and that the theory was subject to many exceptions and limitations. *Ibid.*, p. 327.

¹⁸ Cf. Bryce, *American Commonwealth*, vol. i, p. 288.

cal performances intended for the edification of the galleries or for particular constituencies rather than serious discussion of the merits of proposed legislation.

As is well known nine-tenths of the measures reported by the committees are approved by the house and practically none which are not favorably recommended by them have any chance of being enacted into law. The result is the committees have become the real legislative bodies, and the congress as a whole a mere ratifying organ. That such a system of legislation is a satisfactory solution of the problem of legislation, scarcely anyone will seriously pretend, and it cannot be expected to endure permanently. The evils have been dwelt upon by many writers.¹⁹ Under such a system, the house is guided by a multiplicity of leaders, which is equivalent to saying that it is without leaders in any real and effective sense. In the course of the evolution of the committee system, the necessity for leadership was in some degree met by the concentration of authority in the speaker and the committee on rules, that is to say, the house tended to shift the responsibility from a multitude of leaders to a single committee controlled by the presiding officer. But against this solution the majority of the house rebelled, and the leadership of the speaker and of the committee on rules has recently been repudiated. Another solution must, therefore, be found; the house must have authoritative leaders; it cannot be led by sixty odd committees.²⁰ There must be some single smaller body for examining, sifting, and choosing from among the enormous mass of bills with which congress is now almost continually overwhelmed, and for steering through the house the measures for which there is a real need. The solution for which there is an increasing popular demand consists in the introduction of executive leadership and responsibility. To accomplish this change, it is not necessary to alter the Constitution or to enact a statute; it can be brought about as well by parliamentary custom.

¹⁹ Notably by Bryce, "*The American Commonwealth*," vol. i, chs. 14-15; 20-21, Wilson, *Congressional Government*, chs. 2, 5; also his *Constitutional Government*, chs. 3-4; Godkin, *Unforeseen Tendencies in Democracy*, pp. 96-145; Ford, *Rise and Growth of American Politics*, chs. 18-22; Macy, *Party Organization and Machinery*, chs. 3-4. Compare, also, the following remarks by Mr. Henry L. Stimson, criticizing the committee system, (*The Independent*, 1913, p. 1225). "Tremendous powers are exercised in secret by men who, neither as committeemen nor as congressmen, are responsible to the country at large. Congress is at the mercy of any individual or private interest which can get before any of these committees, and on an ex parte hearing impress the committeemen with a desirability of an appropriation. Such legislative methods simply invite demands for improper favors."

²⁰ Compare especially on this point, Wilson, *Congressional Government*, ch. ii.

As I have said, these departments are now almost entirely disjoined; the only connection is through the committees and this connection is wholly unofficial and entirely dependent upon the willingness of the committees to enter into relations with the President or with the heads of departments. The maintenance of a certain relationship between the two branches is absolutely necessary,²¹ and in practice these relations are and always have been more extensive and intimate than is generally supposed,²² but they are entirely dependent upon the invitation of the committees themselves, are unofficial and more or less secret in character.

As it is, the policies of the executive are frequently subjected to severe criticism in Congress and this criticism is often based upon misinformation or misunderstanding, yet the President has no official spokesman on the floor to answer, explain or defend. Although the chosen leader of his party and more and more regarded by the public as responsible for the fulfillment of past pledges to the nation, he is by his very exclusion from the legislature deprived of the power of leadership which makes responsibility real and effective.²³

This leadership and coöperation may be secured by the following methods:

1. By the restriction of executive messages or addresses, as they now are, to a few definite recommendations embodying the policies in favor of which the party has pronounced in its platform or those for which the President is willing to assume the responsibility. If this were done, congress would treat the recommendations of the President more seriously and not as mere perfunctory suggestions or popular addresses intended mainly for the country. The general public would take a deeper interest in the executive address because of its brevity and its definiteness and this would induce the formation of a more definite public opinion to which, if it were in support of the measures recommended, the President might appeal with greater effectiveness in his efforts to compel legislative action.

²¹ Compare, Follett, *The Speaker*, pp. 327-329.

²² "The usage from the commencement of the government" said Mr. Cambreling, chairman of the ways and means committee in 1837, "has been for the committee through its chairman to consult the head of the department in regard to such measures as he may recommend for the consideration of Congress, for the secretary to attend upon and confer with the committee, if invited, and to furnish the drafts of bills embracing his own proposals, when requested to do so." McConachie, *Congressional Committees*, p. 223.

²³ Compare Macy, *op. cit.*, p. 25, and Wilson, *Constitutional Government*, pp. 67, 202.

2. By allowing the executive the right to initiate bills and by giving precedence to administration bills over other measures, as is the practice in countries where the parliamentary system prevails and which is now the practice in the legislature of Illinois.²⁴ This done, let the majority in congress frankly recognize the leadership which the country has conferred upon the President, as well as the responsibility which the nation more and more insists that he shall bear. Writing when he was yet only a student of politics, Mr. Wilson says:

So far as the government is concerned there is but one national voice in the country, and that is the voice of the President. . . . He alone is chosen by the nation at large. Representatives are the elect of petty constituencies and the senators are chosen by the states; he is, therefore, the only spokesman of the nation, the leader of his party, and he cannot escape that leadership except by his own incapacity. . . . Leadership in government naturally belongs to the executive officers who are daily in contact with practical conditions and exigencies, the law making part of the government ought, therefore, to be very hospitable to suggestions from the executive department in regard to legislative needs.²⁵

²⁴ A rule adopted by the Illinois house of representatives at its last session reads as follows: "When any bill or resolution is introduced for the purpose of carrying into effect any recommendation of the governor, it may by executive message addressed to the speaker of the house be made an administrative measure. The administrative measure may be sent to the appropriate committee or it shall upon request of its introducer, be sent to committee of the whole House. When such a measure had been reported out of committee, it shall have precedence in the consideration of the house over all other measures except appropriation bills. The house shall sit in committee of the whole for the consideration of administration measures on Tuesday morning immediately after reading of the house journal."

"The purpose of this rule" says Senator Hull, its author, "is obvious. It is intended to give assurance to the governor that measures which he recommends will be given fair consideration and by such assurances to impose upon him the obligation to have a legislative program. By so doing, it is hoped to give greater significance to party platforms and to make in some small degree for party responsibility and party government." *American Political Science Review*, May, 1913, p. 239.

²⁵ "Some of our Presidents" says Mr. Wilson, "have deliberately held themselves off from using the full power they might legitimately have used, because of conscientious scruples, because they were more theorists than statesmen. They have held the strict literary theory of the Constitution, the Whig theory, the Newtonian theory, and have acted as if they thought Pennsylvania Avenue should have been still longer than it is; that there should be no intimate communication of any kind between the capitol and the White House; that the President as a man was no more at liberty to lead the houses of congress by persuasion than he was at liberty as President to dominate them by authority—supposing that he had, what he has not, authority enough to dominate them."

3. By permitting the cabinet members to occupy seats in either house of congress with the privilege of answering questions, giving information, and of advocating the adoption of measures which the executive has recommended. This is not a new proposal. It was urged by a select committee of the house in the thirty-eighth congress and again by a select committee of the senate in the forty-sixth congress (1881). The advantages of such an arrangement were dwelt upon by Judge Story in his work on *The Constitution*,²⁶ more recently still, it has been urged by President Taft in a special message to congress,²⁷ and it is well known that the idea has

²⁶ Sec. 869. Speaking on this point, Judge Story said: "The heads of the departments are, in fact, thus precluded from proposing or vindicating their own measures in the face of the nation in the course of debate, and are compelled to submit them to other men who are either imperfectly acquainted with the measures or are indifferent to their success or failure. Thus that open and public responsibility for measures which properly belongs to the executive in all governments, and especially in a republican government, as its greatest security and strength, is completely done away. The executive is compelled to resort to secret and unseen influences, to private interviews, and private arrangements to accomplish its own appropriate purposes, instead of proposing and sustaining its own duties and measures by a bold and manly appeal to the nation in the face of its representatives. One consequence of this state of things is, that there never can be traced home to the executive any responsibility for the measures which are planned and carried at its suggestion. Another consequence will be (if it has not yet been) that measures will be adopted or defeated by private intrigues, political combinations, irresponsible recommendations, and all the blandishments of office, and all the deadening weight of silent patronage."

²⁷ *Congressional Record*, January 13, p. 12. Recommending that cabinet members be allowed to attend the sessions of the house and senate and to take part in the debate, Mr. Taft said: "The rigid holding apart of the executive and the legislative branches of the government has not worked for the great advantage of either. There has been much lost motion in the machinery, due to the lack of coöperation and interchange of views face to face between the representatives of the executive and the members of the two legislative branches of the government. It was never intended that they should be separated in the sense of not being in constant effective touch and relationship to each. The legislative and the executive each performs its own appropriate function, but these functions must be coördinated. Time and time again debates have arisen in each house upon issues which the information of a particular department head would have enabled him, if present, to end at once by a simple explanation or statement. Time and time again a forceful and earnest presentation of facts and arguments by the representatives of the executive whose duty it is to enforce the law would have brought about a useful reform by amendment, which in the absence of such a statement has failed of passage. I do not think I am mistaken in saying that the presence of the members of the cabinet on the floor of each House would greatly contribute to the enactment of beneficial legislation. Nor would this in any degree deprive either the legis-

the support of President Wilson. By thus bringing the executive and legislative departments face to face for purposes of consultation and collaboration, the time of the legislature would be economized, it would afford a means by which congress could keep itself better informed of what the executive departments are doing, it would conduce to harmony of action between the two departments and would relieve the executive from unnecessary criticism based on misunderstanding and want of information. Ex-President Taft says:

The ignorance that congress at times has of what is actually going on in the executive department, and the fact that hours of debate and pages of the *Congressional Record* might be avoided by the answer to a single question by a competent cabinet officer on the floor of either house is frequently brought sharply to the attention of competent observers.²⁸

There are few measures which congress is called on to consider to which the heads of departments are not competent to contribute the sort of information which is necessary to intelligent legislation, yet under the present system of working at arms length, the only official means of securing information is through the slow and circumlocutory process of formal resolution addressed to the executive and a written reply.²⁹

lative or the executive of the independence which separation of the two branches has intended to promote. It would only facilitate their coöperation in the public interest."

²⁸ Article on "The Presidency" in the *Independent*, 1913, p. 1197. Cf., also, an editorial in the *Nation* for December 26, 1912.

²⁹ As an illustration of the inconveniences resulting from the present system which excludes cabinet members from occupying seats in congress the following passages may be cited from the *Congressional Record* of January 29, 1862 (vol. 46, pt. i, p. 549). The house was considering a bill to authorize the issue of legal tender treasury notes.

Mr. Roscoe Conkling: "I understand the gentleman to say that no measure like that he is about to discuss was ever entertained in debate, or, if I understand him, ever recommended by any department of the government; and I would like to inquire of the gentleman from Ohio (Mr. Pendleton), whether he is prepared to answer, and if not, of the chairman of the committee of ways and means, or the gentleman who reported this bill, whether the present secretary of the treasury is in favor of making paper a legal tender; and also whether he is prepared to recommend to congress the adoption of that measure? I will say, with the permission of the gentleman, that, for once, I should like very much to know what is the opinion of the secretary of the treasury, embracing not only the extent of the constitutional power but the economic and political extent, if that is involved in the proposed measure, of making paper a legal tender in payments of debts."

Mr. Spaulding: "In reply to the question of my colleague, I will say that the

In this connection, I venture the suggestion that the executive should be permitted to designate experts like the French *Commissaires du Gouvernement* to appear before the houses for the purpose of explaining measures of an administrative and technical character. An assistant secretary, the chief of a bureau or a commissioner who has had years of practical experience in dealing with the problems upon which it is proposed to legislate, may be presumed to be better informed concerning the expediency and practicability of such legislation than the average member of congress. A brief explanation by such an expert would, in many cases, throw more light upon a proposed bill than days of discussion by members whose information lacks the definiteness and accuracy which comes from practical experience and first hand knowledge.

A more important advantage still from allowing cabinet members seats in congress is that it would enable the President to exert, in an open and official manner, that influence upon legislation which the country more and more expects of him, and which his responsibility to the nation implies. As it is, his official power is exhausted when he has delivered his message to the two houses for neither he nor his ministers may follow up his recommendations by means of oral explanation, argument or persuasion.

It is somewhat singular that congress is one of the few legislative bodies that attempts to do its work almost entirely without expert assistance—without the aid of parliamentary counsel, without bill drafting and revising machinery and without legislative and reference agencies, and until now it has shown little inclination to regard with favor proposals looking toward the introduction of such agencies.

Lastly, the time has come when it is worth considering whether congress should not abandon the practice of embodying purely administrative details in the statutes and leave to the executive a larger power of dealing with such matters by orders and regulations. The result would

Secretary of the Treasury has been called upon for his opinion in regard to the bill. We were assured that his reply would be sent to us yesterday, but we did not receive it. We expect his answer every hour."

Mr. Roscoe Conkling: "I am not certain that I understand what my colleague said. Does he expect a letter from the Secretary of the Treasury which will contain his views on the financial question and also on the legal question?"

Mr. Spaulding: "Upon this bill specifically?"

Mr. Roscoe Conkling: "Containing the legal tender clause?"

Mr. Spaulding: "Yes, sir."

Mr. Pendleton: "I can not answer the question of the gentleman, so far as the opinions of the present secretary of the treasury are concerned."

be not only to simplify our statutory law and give it a more scientific character, but it would facilitate the process of legislation by confining the consideration of congress to the main principles involved, and thereby avoiding waste of time upon minor questions and details. Long and complicated measures encumbered with a mass of details of an administrative character cannot be intelligently considered by an assembly of four or five hundred members. On the face of it, nothing seems more preposterous than to submit such a draft to an assembly of this sort.³⁰ Congress is unfitted for framing and discussing administrative regulations and the task should be left to the executive officers as is the practice in England, and, to a still greater extent, on the continent. There, as is well known, the statutes are framed in general terms, embodying a statement of the main principles and it is left to the minister to supply the necessary administrative details for putting the statute into operation.

In England, moreover, the statutes frequently empower the ministers to issue orders in council having the same force as acts of parliament, subject only to the condition that they shall be laid on the table of both houses and if not expressly disapproved they become law. They are known as "statutory orders" and are prepared by the departments within whose jurisdictions they properly belong. They are printed like the acts of parliament and, in quantity, they constitute a very much larger mass of legislation than do the statutes.³¹ The English have found no danger in this extensive delegation of legislative power to the executive department; on the contrary, it is the testimony of all the writers on English parliamentary procedure that it is both wise and necessary. Mr. Lowell says:

In spite of the potential control retained by the houses over statutory orders, the growing habit of delegating authority to make them involves a substantial transfer of power from parliament to the executive branch of the government, a transfer due in part to the increasing difficulty of legislation.³²

Formerly, the English statutes went into great detail and attempted, as American statutes now do, to embody the complete legislative will, but the inherent difficulties of modern legislation made its abandonment

³⁰ Compare Courtenay Ilbert, *Legislative Forms and Methods*, pp. 40-41.

³¹ Compare the testimony of James Bryce in the hearings before the house committee on library on various bills proposing the establishment of a congressional reference bureau, February 26, 1912. pp. 14, 20.

³² *The Government of England*, vol. i, p. 366.

necessary. If congress were to relieve itself, as the British parliament has lately done, of the task of administrative legislation and delegate a large power of subsidiary legislation to the executive department which is better fitted for the task, I venture to say that it would not only simplify the problem of legislation, but it would result in a substantial improvement in the quality of the legislative output.

The signs indicate that we are tending slowly toward the solution which I have indicated above. Mr. Taft's special message advocating the admission of cabinet members to seats in congress, the new method of executive communication with congress introduced by President Wilson, his well known desire to establish closer personal relations between the legislative and executive departments, his willingness to assume responsibility for carrying out the policies of his party and the excellent results which have attended the adoption of this theory of executive leadership by several recent governors (notably by Hughes of New York, Wilson of New Jersey and Cox of Ohio),³³ are indications of the tendency toward a new conception of executive leadership. Moreover, the theory is in harmony with one of the strongest political tendencies of the time, namely, the growing disposition to exalt the executive and to concentrate larger powers of leadership and responsibility in his hands. It is the inevitable result of a reaction against the evils of our exaggerated system of checks and balances and of divided responsibility. Public opinion approves the new theory of executive leadership in legislation. We read from an editorial in a recent number of one of the most reputable magazines the following words:

Practically speaking, the popular mind accepts the President as head of the legislative branch of the national government . . . the public expects the President to manage congress. If he does not do this, he is not considered a successful President.³⁴

The truth of this statement may be doubted, but it unquestionably represents the view of a large and increasing number of persons. Of course it is not to be expected, nor is it desirable, that congress should abdicate its legislative power in favor of the executive, but if it is to do its work smoothly and efficiently, its forces must be unified and it must

³³ Compare an article by Mr. J. M. Mathews entitled "The new Rôle of the Governor" in *The American Political Science Review*, May, 1912, pp. 216 et seq.

³⁴ *World's Work*, November, 1913, p. 11; cf., also, a recent editorial in the *Nation*, vol. 96, p. 380.

have leadership. The signs seem to indicate that this is to come from the President, who, in the course of the evolution of the Presidential office, is coming more and more to be regarded, as Mr. Wilson has remarked, not only as the legal executive but the responsible leader of his party, and the guide of the nation in the formulation of its political policies.³⁵

³⁵ *Constitutional Government*, p. 75.